



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
LANSING

KIRK T. STEUDLE  
DIRECTOR

October 27, 2014

Ms. Summer Minnick, Director,  
Policy Initiatives and Federal Affairs  
Michigan Municipal League  
208 N. Capitol  
Lansing, Michigan 48933-1354

Ms. Denise Donahue, Director  
County Road Association of Michigan  
417 Seymour  
Suite One  
Lansing, Michigan 48933

Dear Ms. Minnick and Ms. Donahue:

The Michigan Department of Transportation (MDOT) became aware of the October 20, 2014, verdict in the federal lawsuit *United States of America, ex rel. Joshua Harmon v. Trinity Industries, Inc.* (No. 2-12-cv-0089-JRG), where the jury found Trinity Industries guilty of making a false or fraudulent claim to the Federal Highway Administration (FHWA) in obtaining a 2005 letter of federal funding eligibility for the ET-Plus guardrail terminal, manufactured by Trinity Industries. It should be noted that the 2005 FHWA federal funding eligibility letter pertains to the revamped (second) version of the ET-Plus guardrail terminal that was developed in 2005, and not to the original (first) version of the ET-Plus guardrail terminal or the ET-2000 guardrail terminal that preceded the first version of the ET-Plus.

As a result of this recent verdict, MDOT is collecting data regarding ET guardrail terminal installations to determine the number and location of all existing ET-Plus (second version) guardrail installations throughout the state. This is being done in case further action is needed regarding the ET-Plus (second version) guardrail terminal.

For your information, the following documents are attached to this letter:

1. FHWA letter, dated October 21, 2014, informing Trinity Industries that they must conduct additional crash testing of the ET-Plus (second version) guardrail terminal, or risk suspension of federal aid eligibility for this guardrail terminal.
2. Letter from American Association of State Highway Transportation Officials to FHWA, dated October 21, 2014, supporting FHWA's decision to request additional crash testing of the ET-Plus guardrail terminal.

MDOT will notify local transportation agencies of any further developments regarding this matter. If you have any further questions, please contact me at (517) 355-2233.

Sincerely,

Larry Doyle, P.E.  
Local Agency Program Section  
Development Services Division

Enclosures



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Office of the Administrator

1200 New Jersey Ave., SE  
Washington, D.C. 20590

October 21, 2014

In Reply Refer To:  
HOA-1

Gregory Mitchell  
President  
Trinity Highway Products, LLC  
2525 Stemmons Freeway  
Dallas, TX 75207

Dear Mr. Mitchell:

Our number one priority is safety. In 2005, FHWA issued a letter (FHWA No. CC-94) stating that the Trinity Highway Products, LLC (Trinity) ET-Plus guardrail end treatment met crash testing criteria established by the American Association of State Highway and Transportation Officials (AASHTO) and was eligible for federal aid reimbursement. In response to actions taken by several States and questions raised about the eligibility and performance of this device, on October 10, 2014, the FHWA transmitted a memo to each of its fifty-two Division Administrators requesting that they ask all State Departments of Transportation to immediately provide to the Office of Safety any crash information involving the ET-Plus.

On October 20, 2014, the jury in *United States of America, ex rel. Joshua Harmon v. Trinity Industries, Inc.* (No. 2-12-cv-0089-JRG) issued a verdict that Trinity made a false or fraudulent claim to the Federal Highway Administration (FHWA) in obtaining a 2005 letter of federal funding eligibility for the ET-Plus. The FHWA continues to evaluate the eligibility and performance of the ET-Plus.

In light of these events and to support FHWA's ongoing evaluation of the ET-Plus, FHWA has concluded that Trinity must perform additional crash testing of the ET-Plus. Accordingly, FHWA requests that Trinity perform testing and provide to FHWA the information specified in Attachment A to this letter. Please provide the crash testing plan required by Attachment A to FHWA by Friday, October 31, 2014. Should Trinity not comply with this request, FHWA may suspend and/or revoke the eligibility of the ET-Plus.

Please contact me with any questions.

Sincerely,

Gregory G. Nadeau  
Acting Administrator

## Attachment A

### Requested Testing and Information

The Federal Highway Administration (FHWA) requests that Trinity Highway Products, LLC (Trinity) perform testing and provide to FHWA information as described below:

1. In addition to the testing required by the Virginia Department of Transportation (VDOT) on October 10, 2014, Trinity should conduct the following testing of the ET-Plus (with 4" channel) at a nationally accredited testing facility other than the Texas Transportation Institute using NCHRP 350 criteria:
  - a. Tests 3-30 and 3-31 at a 27.75 inch guardrail height (as requested by VDOT),
  - b. Tests 3-32 and 3-33 at a 27.75 inch guardrail height, and
  - c. Tests 3-30, 3-31, 3-32 and 3-33 at a 31 inch guardrail height.

These tests include the testing requested by the VDOT. Trinity shall perform this testing at a nationally accredited testing facility which has not previously tested the ET-Plus. The selected lab should disclose the financial interest it has in any roadside safety hardware.

2. Before this testing is conducted, Trinity should prepare a test plan report and submit that report to FHWA for approval. This report should, at a minimum, identify and explain how Trinity intends to conduct the crash-testing, where and when such testing will be performed, and when Trinity will provide the test results to FHWA. This test plan should be submitted to FHWA by October 31, 2014. All crash tests are to be conducted in accordance with NCHRP 350 requirements. Testing shall be performed and completed as expeditiously as possible.
3. Trinity should allow FHWA personnel and consultants to be present at the crash testing.
4. Consistent with the test plan, Trinity should provide to FHWA detailed product schematics for the system and the head, depicting all dimensions.
5. In addition to this crash testing, Trinity should also provide to FHWA all information and data, including but not limited to photos and videos, that Trinity has regarding existing or previously conducted crash testing or field performance of the ET-Plus which has not previously been provided to FHWA. Please provide such information within 21 days of receipt of this letter.  
Any material submitted to FHWA that Trinity claims as business confidential should be labeled as such.



For Immediate Release  
October 21, 2014

Contact: Tony Dorsey  
[tdorsey@ashto.org](mailto:tdorsey@ashto.org) Cell: 202-412-2391

### **AASHTO Supports FHWA Request for Additional ET-Plus Testing**

WASHINGTON – The American Association of State Highway and Transportation Officials today supported Federal Highway Administration’s request that Texas-based guardrail manufacturer Trinity Industries Inc., maker of the ET-Plus guardrail end treatment, re-test the device to ensure that it meets eligibility requirements for use on federal-aid projects.

“Safety of the traveling public is of paramount concern to state departments of transportation and AASHTO. We support FHWA’s actions to have the manufacturer re-verify, through appropriate crash-testing procedures, whether the ET-Plus guardrail end treatment meets the requirements to remain eligible for use on federal-aid projects,” said Bud Wright, AASHTO executive director. “Additionally, in support of continuously improving safety by our member departments on their roadways, we look forward to the results of an FHWA review of the performance of the ET-Plus guardrail end treatment.”

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The American Association of State Highway and Transportation Officials (AASHTO) is the "Voice of Transportation" representing State Departments of Transportation in all 50 states, the District of Columbia, and Puerto Rico. AASHTO is a nonprofit, nonpartisan association serving as a catalyst for excellence in transportation. Follow us on Twitter at <http://twitter.com/aashtospeaks>.